

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

PATRICK NEAL ANDERSON,

Plaintiff,

v.

MICHAEL J. ASTRUE,

Commissioner of Social Security,

Defendant.

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CIVIL ACTION NO. 11-00061-WS-B

ORDER

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a de novo determination of those portions of the Report and Recommendation to which objection is made,, the recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) and dated October 11, 2011, is **ADOPTED** as the opinion of this Court.

Accordingly, for good cause shown and because no answer has been filed, it is **ORDERED** that Defendant's Motion to Remand (Doc. 22) be and is hereby **GRANTED** and that this action is **REMANDED** to the Social Security Administration pursuant to sentence six of 42 U.S.C. § 405(g), so that the Appeals Council can locate or reconstruct the claim file regarding the Administrative Law Judge's June 25, 2004 decision.

Pursuant to sentence six of Section 405(g), Plaintiff is not a prevailing party for purposes of the Equal Access to Justice Act

("EAJA"), 28 U.S.C. § 2412, as a result of this sentence six remand. See Shalala v. Schafer, 509 U.S. 292, 297-298 and 300-302, 113 S. Ct. 2625, 2629 and 2631-2632, 125 L. Ed. 2d 239 (1993).

Additionally, Defendant's Motion to Dismiss (Doc. 12) is MOOT, and Plaintiff's Motion for Default Judgment (Doc. 16) is DENIED.

DONE and **ORDERED** this the 19th day of October, 2011.

s/WILLIAM H. STEELE
CHIEF UNITED STATES DISTRICT JUDGE